plaintiff (the present appellant) in the Sessions Court and this decision was reversed on appeal by the High Court. It is not possible to ascertain from the record what facts were found by the learned President of the Sessions Court. In the circumstances the only order that can be made by this Court is to allow the appeal and order the case to be tried *de novo* by the Sessions Court. When the case is heard again, the Sessions Court should make definite findings of fact on the following matters :—

(i) Was there any agreement as to where the rent should be paid, if so where?

(ii) Was there a demand for rent on the premises on the 28th of February, 1951?

The Sessions Court when arriving at a decision will take these findings of fact into consideration.

The appeal is allowed. The appellants will have the costs here and before the High Court; the costs in the Sessions Court will follow the event.

Sir Charles Murray-Aynsley, C.J., (Singapore) : —I have had the opportunity of reading the judgment of the Chief Justice of the Federation. I agree and have nothing to add except to say that I am doubtful whether the judgment in the case of *Kor Aik v. Tay Aik Liok*[1], is correct in so far as it holds that the present Control of Rent Ordinance relieves a landlord of any common Law obligations.

Knight, J. : —I have had the advantage of reading the judgment of the learned President in this appeal with which I agree and have nothing to add.

Appeal allowed.

In re CHUNG LIT & CHUNG AH KAM.

[Rev. Crim. Juris. (Spenser Wilkinson, J.) May 16, 1952]
[Penang — Criminal Revision No. 3 of 1952]

Municipal Ordinance (Cap. 133), ss. 169, 246(1) and 247(6) — Abatement of nuisance — "Being premises in a ruinous and dangerous state" — Meaning of — Closing Order is a criminal cause or matter — Proof required before Closing Order can be made.

By a Notice dated 21st June, 1950, purporting to be issued under sections 169 and 246(1) of the Municipal Ordinance the landlord of premises was required within one month to abate a nuisance "being premises in a ruinous or dangerous state." On his failure to comply with it he was served with a summons under section 246. To this he pleaded guilty and an Abatement Order was made. This Abatement Order was also disregarded and on 7th March, 1951, the magistrate made a Closing Order under section 247(6) to be carried out within three months. Copies of this Closing Order were served on the occupiers of the premises.

Held, that (1) section 169(2) is intended to cover only urgent situations such as would arise in an earthquake, tempest, fire, flood or some unusual occurrence or the sudden discovery of a hidden defect; (2) section 246 does not cover the complete demolition of a building; it relates only to the carrying out of remedial work. The Notice of 21st June, was, therefore, invalid; (3) although section 246(1) provides alternatives as to the persons on whom service of a Nuisance Notice is to be made section 246(3) provides that in case of structural defects the owner should be served and this cannot be taken to mean that the occupants must also be served. Nor is it necessary, at the hearing of an application for a Closing Order, for the Court to give the occupants an opportunity to be heard; (4) for the purposes of section 256 a Closing Order is a criminal cause or matter but the occupiers not being parties to it have no right of appeal unless such right is conferred by statute; and (5) before a Closing Order is made there must be strict proof of unfitness for human habitation caused by a nuisance and in considering the fitness or otherwise of the premises the magistrate must bear in mind the authorities on the point and, in particular, the observations of the House of Lords in Hall v. Manchester Corporation[5].

Semble: If on the complaint that the owner had not complied with a Nuisance Notice the magistrate makes not a Closing Order but an Abatement Order he has no jurisdiction to make a Closing Order on a further complaint for the same defect.

Cases referred to :—

(1) *H. Nunes v. Song Kee Chuan* (1935) M.L.J. 132; (1935) S.S.L.R. 107.

(2) *Tan Hoon Swee v. Public Prosecutor* 6 F.M.S.L.R. 191 at p. 197.

(3) *Tan Lian v. Rex* (1947) M.L.J. 196.

(4) *Rex v. West Kent Quarter Sessions Appeal Committee* (1951) 2 T.L.R. 470 at p. 472; (1951) 2 All E.R. 728.

(5) *Hall v. Manchester Corporation* 113 L.T. 465.

CRIMINAL REVISION.

F. G. Pooley for the Municipality.

P. C. Chew for the landlord.

Lim Kheng Kooi for the petitioners (tenants).

Cur. Adv. Vult.

Spenser Wilkinson, J. : —This is a revision which arose out of a petition by one Chung Lit and one Chung Ah Kam, tenants of Nos. 267 and 269 Chulia Street respectively, who were summoned before the Magistrates' Court on a charge of having failed to comply with an Order to cease inhabiting the premises. These Summonses had been mentioned before the Magistrate on various occasions but had not yet been heard, and I, therefore, decided to remove the proceedings into the High Court under the provisions of section 57 of the Courts Ordinance. My chief reason for exercising my powers of revision in this case and at this stage was that I had doubts as to whether occupiers served with a Closing Order had a right to

appeal against that Order. Moreover, as there appeared to be defects in some of the previous proceedings upon which the Summonses to the petitioners were based, I thought it well to call for the records of all the proceedings relating to the proposed demolition of the premises in question.

The origin of these proceedings is a Notice dated 21st June, 1950 issued by the Municipal Commissioners* of George Town, Penang to the owners of premises Nos. 267 and 269, Chulia Street as follows :—

"Take notice that under the provisions of the Municipal Ordinance (Chapter 133) the Municipal Commissioners of George Town, Penang, being satisfied of the existence at Nos. 267 and 269 Chulia Street of a nuisance being premises in a ruinous or dangerous state do hereby require you within one month from the service of this notice to abate the same and for that purpose to take down the said buildings."

The landlord having failed to comply with this Notice he was served with a Summons issued out of the Magistrate's Court containing the following charge :—

"Failing to comply with a Dangerous Building Notice served on you on 7.7.50 requiring you within one month to take down the said premises Nos. 267 and 269, Chulia Street, Penang, breach of section 246(1) and punishable under section 246(6), Cap. 133."

The owner of the premises appeared before the Magistrate on this Summons on the 18th October, 1950 and the record reads as follows :—

"Charge explained. Pleads guilty. Abatement of Nuisance Order 3 months $1.00 costs."

The relevant part of the formal Order issued thereon reads as follows :—

"Now, on proof here had before me that the nuisance so complained of does exist at the said premises and that the same is caused by the act, default, or sufferance of Phuah Kim Leong, I, in pursuance of Municipal Ordinance (Chapter 133) do order the said Phuah Kim Leong (or the said owner or occupier) within three months from the service of this Order according to the said Ordinance to take down the premises at Nos. 267 and 269, Chulia Street, Penang."

The landlord having failed to comply with this Order he was again summoned, the charge this time being :—

"Failing to comply with an Abatement of Nuisance Order served on you on 21.10.50 requiring you within three months to take down the premises Nos. 267 and 269, Chulia Street, Penang, an offence under section 267(3) and punishable under section 247(9), Cap. 133 Muni."

This case was heard on the 7th March, 1951 and the record reads as follows :—

"Charge explained. Pleads guilty. Costs to be paid by accused. Closing Order to issue under section 247(6) of the Municipal Enactment — to be carried out within three months."

* The title was changed on the 1st January 1951 to "Municipal Councillors" by Ordinance No. 53 of 1950 but as these proceedings began before that date the old title has been retained in this judgment.

The relevant part of the formal Order issued on this occasion is as follows :—

"Now, on proof here had before me that by reason of the nuisance the dwelling houses Nos. 267 and 269, Chulia Street, Penang are unfit in my judgment for human habitation, I, in pursuance of Ordinance No. 133 (Municipal), do hereby prohibit the use of the said dwelling houses for human habitation and to close the said premises Nos. 267 and 269, Chulia Street, Penang within three months."

Copies of this Closing Order were served on the various occupiers of the two houses in question. The occupiers having failed to leave the premises they were in due course summoned for failing to comply with the provisions of the Notice requiring them and their families within one month to cease inhabiting the premises.

The first point to be decided is whether the Notice of the 21st June, 1950 which originated these proceedings was a valid notice.

Although no particular section is mentioned in the Notice there is, I think, no doubt both from the wording of the Notice and from what was stated by Counsel for the Municipality at the hearing before me that it purported to be issued under sections 169 and 246(1) of the Municipal Ordinance. Sections 169 and 246(1) read as follows :—

"169. (1) If any building or anything affixed thereon is in a ruinous state, likely to fall or in any way dangerous to the inhabitants or occupiers of such building or to any neighbouring houses or buildings or to the inhabitants or occupiers thereof or to passengers, it shall be deemed a nuisance and shall be liable to be dealt with summarily under this Ordinance.

(2) The Commissioners shall immediately, if it appears to them to be necessary, cause a proper hoarding or fence to be put up for the protection of passengers or take such other steps as appear to them necessary to render the building secure or demolish the building, and the expenses thereby incurred shall be paid by the owner of the building."

"246. (1) On the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under this Ordinance, the Commissioners shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act, default or sufferance the nuisance arises or continues or, if such person cannot be found, on the occupier or owner of the premises on which the nuisance arises, requiring him to abate the same within the time specified in the notice and to execute such works and do such things as are necessary for that purpose and, if the Commissioners think it desirable specifying any works to be executed."

It was conceded that the closing words of sub-section (1) of section 169 "shall be liable to be dealt with summarily under this Ordinance" refer to sections 246 to 249. The effect of the sub-section, therefore, is to add to the list contained in section 245 of the nuisances which can be dealt with under the sections which follow. Mr. Pooley suggested, as I understood his argument, that because under sub-section (2) of

section 169 the Commissioners can in certain circumstances themselves demolish the buildings it follows that they can under section 246 call upon the owner to demolish. In my opinion this does not follow. I think sub-section (2) of section 169 is intended to cover only urgent situations, and I find it difficult to see how the use of this sub-section can arise except in cases either of earthquake, tempest, fire, flood or some other unusual occurrence, or the sudden discovery of a hidden defect. The Municipality have a public duty to abate nuisances and to preserve public health, and it cannot, it seems to me, be right that they can be allowed to stand by and see a building gradually deteriorate until its condition becomes so serious that the only cure is demolition. There may be other circumstances, which do not occur to me, in which the use of sub-section (2) would be proper, but there must obviously be strict limits to the use of this very arbitrary power.

The real question to be decided is whether the wording of section 246 is apt to cover the complete demolition of a building. It seems clear that the primary object of this section is to provide for the abatement of nuisances, and it provides that the owner or occupier can be called upon to execute such works and do such things as are necessary for that purpose and for that purpose only. Can the works and things necessary to abate the nuisance extend to complete demolition? I think not. There are various sections in the Municipal Ordinance which deal with demolition of buildings. Section 101(8) deals with the removal of a building which does not comply with a street plan; section 144(9) provides for a mandatory order to demolish a building erected without, or not in accordance with, a plan or in contravention of the Ordinance; under section 250 the Commissioners can themselves, after due inquiry, make a demolition order in respect of obstructive buildings from which there is an appeal to the Governor in Council; section 148 contains provisions for demolition in pursuance of an order relating to back-lanes; and section 331 provides for demolition under an improvement scheme. There is also provision in section 236 for the demolition in whole or in part of any partition, compartment, loft, gallery, pent-roof, out-house or other structure or erection, where it is necessary to render a dwelling house fit for human habitation. This section does not, however, provide for complete demolition of the whole building and the mode of enforcement is by a mandatory order of the Court. Finally, section 248 provides for a demolition order being made after a closing order, which is in turn made only after a notice under section 246.

Reading sections 246 to 249 together and comparing them with the other provisions of the Ordinance dealing with demolition, I came to the conclusion that a notice under section 246 must be a notice to carry out remedial work and that it is not open to the Municipality under that section to call upon the owner to demolish.

This conclusion is to some extent supported by authority. In the case of *H. Nunes v. Song Kee Chuan*[1], decided in 1916 but reported in 1935, a notice was served on the owner of certain premises stating that the premises were in such a state as to be a nuisance and requiring him to abate the same "and for that purpose to remove the occupants and cease to use as a human dwelling". In that case the nuisance was due solely to faulty construction of the house which was irremediable and it was held that as the removal of the occupants would not cure the defect the Notice was bad. The case was heard by a Court of three Judges and in giving the judgment of the Court Bucknill, C.J., referred to the then sections 217, 304 and 137, which are the equivalents of sections 236, 329 and 148 of the present Municipal Ordinance, and compared them with the equivalent of the present section 246. The following passage from the judgment in that case appears to be relevant to the present case :—

> "The fact is that in their proper construction all provisions of this part of the Municipal Ordinance which deal with nuisance capable of being summarily dealt with contemplate only nuisances which are capable of abatement by the person charged....."

I also agree with another passage in that judgment, which, referring to the provisions of what is now section 236, states :—

> "If a single house is in no way dependent for its defects upon other houses it is difficult to conceive a case in which it would not be possible effectively to render it fit for human habitation and it could therefore be dealt with under section 217."

The first of these passages supports the view that it is only in cases where the nuisance can be abated by works to be carried out for that purpose that the provisions of section 246 can be invoked. Demolition is ordered under section 248 only if the owner fails to carry out the works ordered.

It is clear from the terms of the Notice that the aim of the Municipality in the present case was to have the whole building demolished; and if that is what they wanted then it seems to me they should have proceeded either under an improvement scheme or a back-lane scheme, if the relevant sections were applicable. I have no evidence before me and very little information as to the condition of the building now in

question, but it is alleged that the tenants have offered to expend the sum of $5,000 on repairs and the landlord has refused to sign the plans. If this be correct (though I make no finding as to this) it would appear that what should have been done was that the landlord should have been called upon to put the building into proper order and for this purpose either sections 246 to 249 or section 236, if applicable, would have provided adequate machinery. It was stated at the hearing before me that there is no means of forcing a landlord to rebuild, and this is true; but there are means of bringing pressure upon a landlord to carry out a considerable measure of partial reconstruction — for example, if the original notice had called upon the landlord to execute specified works and he had failed to do so, he would by now be liable to fines to the extent of something like $3,850.

It should, I think, be borne in mind that the existing sections of the Municipal Ordinance are old law and were drafted long before rent restriction or rent control came into existence. Whilst it is true that the legislature has not thought fit in the Rent Control Ordinance to modify any of the provisions of the Municipal Ordinance yet it appears to me that the powers and duties of the Municipality in regard to buildings and public health can properly be exercised in the light of existing conditions. At a time like the present when there is an unprecedented shortage of housing accommodation and the legislature has passed measures especially designed to give occupiers of dwelling houses security of tenure it seems to me that it would be right for Municipalities (who have a considerable discretion in the choice of remedies available to them) to put in train those provisions of their Ordinance which would result in having defects of this kind put right rather than those which would result in the complete destruction of badly needed living accommodation.

No doubt in the present case the Municipality had reasons for thinking that demolition was the best course — they may, for example, have thought that extensive repairs to old buildings would not be an economical course — but I think they fell into error in supposing that section 246 enable them to order complete demolition. I must, therefore, rule that the Notice in question was invalid.

I turn now to the Abatement of Nuisance Order made on the 13th October, 1950. The wording of the formal Order is inaccurate, because there was, in fact, no proof before the Magistrate that a nuisance existed. There was proof, however, by virtue of the owner's plea of guilty, that he had failed to comply with a Notice served upon him and, had that Notice been valid, this failure to comply would in my opinion have been sufficient to give the Magistrate jurisdiction to make a Nuisance Order under paragraph (a) of sub-section (1) of section 247.

Before dealing with the Closing Order made on 7th March, 1951 I will consider three arguments which were put forward by Mr. Lim Kheng Kooi on behalf of the occupants of the buildings in question. In the first place it was suggested that the Nuisance Notice ought to have been served on the occupants as well as the owner. I cannot accept this contention. Sub-section (3) of section 246 provides that where the nuisance arises from any want or defect of a structural character, as it did here, the Notice shall be served on the owner. Whilst it is true that this sub-section does not say that it need not be served on the occupiers I am of opinion that this is implied. The provisions as to service contained in section 246(1) appear to me to be alternatives, but sub-section (3) lays down which alternative is to be adopted in cases of structural defects. In such a case I cannot see that any good purpose would be served by serving the occupants, nor is there anything to indicate which of numerous occupants ought to be served.

The next point made on behalf of the occupants is that before making a Closing Order a Police Court ought to give an opportunity to the occupants concerned to be heard. This raises a very difficult question of principle. It has been held in cases of forfeiture under the Criminal Procedure Code that an order forfeiting or confiscating anybody's property should not be made without first giving the owner an opportunity of being heard (see *Tan Hoon Swee v. Public Prosecutor*[2]; *Tan Lian v. Rex*[3]. It was suggested that upon the same principle the Order ejecting an occupier or tenant from his house ought not to be made without his being heard. The legislature, however, has not thought fit to make any provision for this to be done, and in cases of closing orders apparently leaves the tenants or other occupants of the premises to pursue their ordinary remedies, if any, under the law of landlord and tenant. Moreover, I am of the opinion that a closing order is normally intended to be a temporary measure pending the completing of the work necessary to abate the nuisance and as provision is made for paying to the occupiers their expenses of removal this was probably considered to be sufficient protection. A further difficulty is that when the owner of a dwelling house is brought before

the Court on an application for a closing order against him the Court apparently has no means of knowing what occupants, if any, will be affected by the order. Lastly, the legislature having made a closing order compulsory where unfitness for human habitation has been proved it is difficult to see what an occupier could usefully say if he were heard.

On the whole I have come to the conclusion that, in the absence of any provision either in the Municipal Ordinance or in the Criminal Procedure Code for bringing the occupants of a dwelling house before the Court upon an application for a closing order against the owner, the Court has no duty to give the occupants an opportunity of being heard. I regret this conclusion, because in the present circumstances of housing difficulties it seems to me that injustice may occur where occupiers, who might be ready themselves to carry out the necessary works to put the building into order, are ejected under the provisions of sub-section (14) of section 247 by reason of the failure of the landlord to carry out these works.

The next question is whether the occupiers of a dwelling house in respect of which a Closing Order has been made have a right to appeal against the Closing Order. I think there is no doubt that there is an appeal against any kind of Nuisance Order by the person against whom the Order is made — he is the person summoned and he is clearly a party to the proceedings. The difficulty arises in regard to occupiers who are not present in Court when the Closing Order is made, but who, once they have been served with such Order, certainly have some interest in the matter. I do not think section 256 of the Municipal Ordinance assists in determining whether or not there is a right of appeal. Sub-section (1) of that section clearly gives no right which does not already exist and sub-section (2) merely provides that there shall be no appeal against certain Nuisance Orders. Section 302 of the Criminal Procedure Code in so far as it is relevant to this question reads as follows :—

"Except in any case to which section 296 applies any person who is dissatisfied with any judgment, sentence or order pronounced by any District Court or Police Court in a criminal case or matter to which he is a party may prefer an appeal....."

I am satisfied that for the purpose of this section a Closing Order made by a Police Court is a criminal cause or matter, because failure to comply with the Order may result in punishment by a fine. The difficult question is whether or not occupiers can be said to be parties to the matter. In an ordinary criminal case the parties are the prosecutor and the accused, but these are rather special proceedings so that I do not think that this concludes the matter. According to the definition in the English Judicature Acts a party includes every person served with notice of or attending any proceeding, although not named on the record; but this is a statutory definition explaining the meaning of the word in the particular Act in which it is contained and deals only with civil proceedings. I think the words "any order pronounced by any..... Court in a criminal case to which he is a party" connote a situation where the party is before the Court when the Order is made. I have come to the conclusion, therefore, that the mere fact that the occupiers of a dwelling house have been served with a Closing Order made by a Police Court does not make them parties to a criminal case or matter within the meaning of the section. It has been said that it is most elementary learning that no appeal from a Court lies to any other Court unless there is a statutory provision which gives a right to appeal, and the decision of every Court is final if it has jurisdiction, unless an appeal is given by statute (*Rex v. West Kent Quarter Sessions Appeal Committee*[4]). As I can find no right of appeal given to an occupier in the circumstances of this case by any statute I take the view that no such right exists.

I need not deal at any length with the Closing Order which was made in this case for it was conceded by Mr. Pooley on behalf of the Municipality that it was bad and would have to be set aside. The wording of sub-section (7) of section 247 is very strong — "a closing order shall *only* be made where it is proved to the satisfaction of the Police Court that *by reason of a nuisance* a dwelling house is unfit for human habitation, and, if such proof is given the Police Court *shall* make a closing order and *may* impose a fine ....." (the underlining is mine). Under this provision a mere admission by the owner is not enough. There must be strict proof of unfitness for human habitation caused by a nuisance and in considering the fitness or otherwise of the premises the Magistrate must bear in mind the authorities on the point and particularly the observations made in the House of Lords in the case of *Hall v. Manchester Corporation*[5] as to what constitutes unfitness for human habitation. I have in mind these two passages from the opinion of Lord Dunedin in that case :—

".....the by-laws may provide for a modern and up-to-date standard, whereas the condemnation under section 41 of the Act of 1867 can only be when there is absolute unfitness for human habitation....."

"I have already said that 'unfit for human habitation' is a very strong expression and vastly different from 'not up to modern requirements'. Further, if such a term

is applied to a house as a whole it must mean that each and every room is unfit....."

There was in my opinion no evidence before the Magistrate in the present case either that the houses in question were unfit for human habitation or that they were so unfit by reason of a nuisance.

There is a further point regarding this Closing Order, which was not taken at the hearing before me. The original Notice called upon the owner to abate the nuisance within one month from the service of the Notice. The owner failed to comply so that one month after service, which was effected on the 7th July, 1950, he was in default. Upon this default the owner was summoned in pursuance of section 247(1) and appeared before the Court. It was then open to the Court both to impose a fine and then make an Order, which under sub-section (2) of section 247 could be an Abatement Order or a Prohibition Order or a Closing Order or a combination of such Orders. After hearing the parties the Magistrate made an Abatement Order only. I am inclined to think that that was the end of the proceedings and I doubt whether the Magistrate had any jurisdiction to make any further Order at a subsequent time upon a fresh Summons regarding the same default. Under sub-section (9) of section 247 the owner could, of course, be summoned, as he was, and fined; but having refrained from making a Closing Order when the matter was properly before the Court on the 18th October, 1950 I find it difficult to see under what provision of the law a further Nuisance Order in the shape of a Closing Order could be made on the 7th March, 1951. As, however, the point was not argued before me I express this view only tentatively.

As the original Notice upon which all the proceedings in this case are founded is invalid I think they are all bad *ab initio*. I have, however, expressed my opinion upon the various other points raised not only in deference to the arguments put forward before me but also because my views may be of assistance both to the Municipality and to Magistrates before whom such cases may in the future be brought.

My order, therefore, will be that the Abatement of Nuisance Order made on the 18th October, 1950 and the Closing Order made on the 7th March, 1951 are set aside. It follows that the Summonses against the various occupants are without foundation and Summons Cases Nos. 803 804, 805, 806 and 807 of 1951 are dismissed. The Orders on the landlord to pay costs cannot stand either and any costs paid by him must be refunded.

It was suggested by Mr. Pooley on behalf of the Municipality that any further proceedings in respect of these premises should be heard in the High Court. I have come to the conclusion that this course is not possible. The existing proceedings were removed into the High Court under the provisions of section 57 of the Courts Ordinance, and those proceedings have now been disposed of. There are, therefore, now no proceedings in existence which can be dealt with under that section. I am, therefore, of the opinion that the proper course will be for the Municipality, after going further into the whole matter, to consider whether they should proceed under either the back-lane or the improvement provisions of the Ordinance, or alternatively, under section 236 or section 246. If as a result of any action they may take under any of those sections further proceedings are taken, then if any person affected by those new proceedings is aggrieved the matter can again be brought before me either on appeal or upon review as the case may be.

Order accordingly.

OVERSEA-CHINESE BANKING CORPORATION v. KHOR THYE SENG.

[Orig. Civ. Juris. (Thomson, J.) May 16, 1952]

[Ipoh — Originating Summons No. 250 of 1952]

Debtor and Creditor (Occupation Period) Ordinance, 1948, s. 4(3)(b) — Demand — Meaning of — Whether the rendering of a Statement of Account by a bank constitutes a demand.

In December 1937, one Khor Tai Kwee, now deceased, opened an account with the Ipoh branch of the Oversea-Chinese Banking Corporation, Ltd. The account was an ordinary current account and it was arranged that Khor Tai Kwee should be allowed to overdraw, the overdraft being secured by two charges on a piece of land at Kuala Kangsar. At the Japanese occupation of Malaya, there was an amount of $13,319 due to the bank on the overdraft. Down to the end of April 1944, a number of payments were made into the account by Khor Tai Kwee, leaving a debit balance of $11,594. Thereafter four payments were made by Khor Tai Kwee and when he died in 1945, the account was in credit to the extent of $838. The charges which had been given by way of security were not discharged. The present proceedings were brought by the bank against the administrator of the estate of Khor Tai Kwee. The bank claimed that the payments made in 1944 were made voluntarily without demand in respect of a pre-occupation debt and should accordingly be revalued in accordance with the provisions of the Debtor and Creditor (Occupation Period) Ordinance. It was argued for the respondent firstly that the bank had failed to discharge the onus of proving that no demand was made, that in the absence of any reliable evidence payment by itself imparts a demand and that the action being against the estate of a deceased person, the Court must be convinced that no demand was made by the bank; secondly it was argued that the monthly statements of accounts rendered by the bank constituted a demand in law.